

**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

MARK BUSKIRK,
Plaintiff

V.

VERDE ENERGY USA, INC.,
Defendant

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

MARK BUSKIRK (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania
and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing Hanover Township,
4 Pennsylvania 18706.

5 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

6 7. Defendant is a corporation that has its office located in Norwalk,
7 Connecticut 06851.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C.
9 §153(39).

10 9. Defendant acted through its agents, employees, officers, members,
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
12 representatives, and insurers.

13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone number that he has had for more
15 than one year.

16 11. Plaintiff has only used this number as a cellular telephone number.

17 12. The phone number has been assigned to a cellular telephone service
18 for which Plaintiff incurs a charge for incoming calls.

19 13. Beginning in April 2015 and thereafter, Defendant called Plaintiff on
20 his cellular telephone number.

1 14. When contacting Plaintiff on his cellular telephone, Defendant used an
2 automatic telephone dialing system and automatic and/or pre-recorded messages.

3 15. Defendant's telephone calls were not made for "emergency purposes."

4 16. Defendant's pre-recorded and/or automated messages would state its
5 name and that its call was "for cheaper energy rates."
6

7 17. In mid-April 2015, Plaintiff spoke to one of Defendant's employees
8 and advised Defendant to stop calling his cellular telephone number.

9 18. Defendant, however, ignored Plaintiff's revocation of consent and
10 continued to place calls to his cellular telephone.
11

12 19. Defendant's calls were so persistent that Plaintiff was forced to block
13 the above referenced number to avoid future calls.

14 20. Defendant called Plaintiff approximately fifteen (15) additional times
15 after he spoke with its employee and revoked consent to call his cellular telephone.
16

17 21. Most recently, Defendant called Plaintiff on May 19, 2015, on his
18 cellular telephone.
19

20 **DEFENDANT VIOLATED THE**
21 **TELEPHONE CONSUMER PROTECTION ACT**

22 22. Plaintiff incorporates the forgoing paragraphs as though the same were
23 set forth at length herein.

24 23. Defendant initiated multiple automated telephone calls to Plaintiff's
25 cellular telephone using a prerecorded voice.

1 24. Defendant initiated these automated calls to Plaintiff using an
2 automatic telephone dialing system.

3 25. Defendant's calls to Plaintiff were not made for emergency purposes.

4 26. Defendant's calls to Plaintiff, in and after mid-April 2015, were not
5 made with Plaintiff's prior express consent.
6

7 27. Defendant's acts as described above were done with malicious,
8 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
9 under the law and with the purpose of harassing Plaintiff.
10

11 28. The acts and/or omissions of Defendant were done unfairly,
12 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
13 lawful right, legal defense, legal justification or legal excuse.
14

15 29. As a result of the above violations of the TCPA, Plaintiff has suffered
16 the losses and damages as set forth above entitling Plaintiff to an award of
17 statutory, actual and trebles damages.
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, MARK BUSKIRK, respectfully prays for a
21 judgment as follows:

- 22 a. All actual damages suffered pursuant to 47 U.S.C. §
23 227(b)(3)(A);
24
25

- 1 b. Statutory damages of \$500.00 per violative telephone call
2 pursuant to 47 U.S.C. § 227(b)(3)(B);
3 c. Treble damages of \$1,500.00 per violative telephone call
4 pursuant to 47 U.S.C. §227(b)(3);
5 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
6 e. Any other relief deemed appropriate by this Honorable Court.
7

8 **DEMAND FOR JURY TRIAL**

9 PLEASE TAKE NOTICE that Plaintiff, MARK BUSKIRK, demands a jury
10 trial in this case.
11

12 RESPECTFULLY SUBMITTED,

13 DATED: 07-15-15

14 KIMMEL & SILVERMAN, P.C.

15 By: /s/ Craig Thor Kimmel
16 CRAIG THOR KIMMEL
17 Attorney ID # 57100
18 Kimmel & Silverman, P.C.
19 30 E. Butler Pike
20 Ambler, PA 19002
21 Phone: (215) 540-8888
22 Fax: (877) 788-2864
23 Email: kimmel@creditlaw.com
24
25